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HOUSE BILL 506

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

PATSY G. TRUJILLO

AN ACT

RELATING TO HUMAN RIGHTS; MAKING IT UNLAWFUL TO DISCRIMINATE  
BASED UPON SEXUAL ORIENTATION; AMENDING AND ENACTING SECTIONS OF  
THE HUMAN RIGHTS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 28-1-1 NMSA 1978 (being Laws 1969,  
Chapter 196, Section 1) is amended to read:

"28-1-1. SHORT TITLE. -- [~~This act~~] Chapter 28, Article 1  
NMSA 1978 may be cited as the "Human Rights Act". "

Section 2. Section 28-1-2 NMSA 1978 (being Laws 1969,  
Chapter 196, Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS. -- As used in the Human Rights Act:

A. "person" means one or more individuals, a  
partnership, association, organization, corporation, joint  
venture, legal representative, trustees, receivers or the state

1 and all of its political subdivisions;

2 B. "employer" means any person employing four or  
3 more persons and any person acting for an employer;

4 C. "commission" means the human rights commission;

5 D. "director" means the director of the human rights  
6 division of the labor department;

7 E. "employee" means any person in the employ of an  
8 employer or an applicant for employment;

9 F. "labor organization" means any organization  
10 [~~which~~] that exists for the purpose in whole or in part of  
11 collective bargaining or of dealing with employers concerning  
12 grievances, terms or conditions of employment or of other mutual  
13 aid or protection in connection with employment;

14 G. "employment agency" means any person regularly  
15 undertaking with or without compensation to procure  
16 opportunities to work or to procure, recruit or refer employees;

17 H. "public accommodation" means any establishment  
18 that provides or offers its services, facilities, accommodations  
19 or goods to the public, but does not include a bona fide private  
20 club or other place or establishment [~~which~~] that is by its  
21 nature and use distinctly private;

22 I. "housing accommodation" means any building or  
23 portion of a building [~~which~~] that is constructed or to be  
24 constructed [~~which~~] that is used or intended for use as the  
25 residence or sleeping place of any individual;

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1 J. "real property" means lands, leaseholds or  
2 commercial or industrial buildings, whether constructed or to be  
3 constructed, offered for sale or rent, and any land rented or  
4 leased for the use, parking or storage of house trailers;

5 K. "secretary" means the secretary of labor;

6 L. "unlawful discriminatory practices" means those  
7 unlawful practices and acts specified in Section 28-1-7 NMSA  
8 1978;

9 M "physical or mental handicap" means a physical or  
10 mental impairment that substantially limits one or more of an  
11 individual's major life activities. An individual is also  
12 considered to be physically or mentally handicapped if he has a  
13 record of a physical or mental handicap or is regarded as having  
14 a physical or mental handicap;

15 N. "major life activities" means functions such as  
16 caring for one's self, performing manual tasks, walking, seeing,  
17 hearing, speaking, breathing, learning and working; ~~and~~

18 O. "applicant for employment" means a person  
19 applying for a position as an employee; and

20 P. "sexual orientation" means heterosexuality,  
21 homosexuality or bisexuality, whether actual or perceived."

22 Section 3. Section 28-1-7 NMSA 1978 (being Laws 1969,  
23 Chapter 196, Section 7, as amended) is amended to read:

24 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an  
25 unlawful discriminatory practice for:

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1           A. an employer, unless based on a bona fide  
2 occupational qualification, to refuse to hire, to discharge, to  
3 promote or demote or to discriminate in matters of compensation,  
4 terms, conditions or privileges of employment against any person  
5 otherwise qualified because of race, age, religion, color,  
6 national origin, ancestry, sex, sexual orientation, physical or  
7 mental handicap or serious medical condition; provided, however,  
8 that 29 U. S. C. Section 631(c)(1) and (2) shall apply to  
9 discrimination based on age;

10           B. a labor organization to exclude an individual or  
11 to expel or otherwise discriminate against any of its members or  
12 against any employer or employee because of race, religion,  
13 color, national origin, ancestry, sex, sexual orientation,  
14 physical or mental handicap or serious medical condition;

15           C. any employer, labor organization or joint  
16 apprenticeship committee to refuse to admit or employ any  
17 individual in any program established to provide an  
18 apprenticeship or other training or retraining because of race,  
19 religion, color, national origin, ancestry, sex, sexual  
20 orientation, physical or mental handicap or serious medical  
21 condition;

22           D. any person, employer, employment agency or labor  
23 organization to print or circulate or cause to be printed or  
24 circulated any statement, advertisement or publication, to use  
25 any form of application for employment or membership or to make

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1 any inquiry regarding prospective membership or employment  
2 [~~which~~] that expresses, directly or indirectly, any limitation,  
3 specification or discrimination as to race, color, religion,  
4 national origin, ancestry, sex, sexual orientation, physical or  
5 mental handicap or serious medical condition unless based on a  
6 bona fide occupational qualification;

7 E. an employment agency to refuse to list and  
8 properly classify for employment or refer an individual for  
9 employment in a known available job, for which the individual is  
10 otherwise qualified, because of race, religion, color, national  
11 origin, ancestry, sex, [~~or~~] sexual orientation, physical or  
12 mental handicap or serious medical condition, unless based on a  
13 bona fide occupational qualification, or to comply with a  
14 request from an employer for referral of applicants for  
15 employment if the request indicates either directly or  
16 indirectly that the employer discriminates in employment on the  
17 basis of race, religion, color, national origin, ancestry, sex,  
18 sexual orientation, physical or mental handicap or serious  
19 medical condition unless based on a bona fide occupational  
20 qualification;

21 F. any person in any public accommodation to make a  
22 distinction, directly or indirectly, in offering or refusing to  
23 offer its services, facilities, accommodations or goods to any  
24 individual because of race, religion, color, national origin,  
25 ancestry, sex, sexual orientation or physical or mental

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1 handicap, provided that the physical or mental handicap is  
2 unrelated to an individual's ability to acquire or rent and  
3 maintain particular real property or housing accommodation;

4 G. any person to:

5 (1) refuse to sell, rent, assign, lease or  
6 sublease or offer for sale, rental, lease, assignment or  
7 sublease any housing accommodation or real property to any  
8 individual or to refuse to negotiate for the sale, rental,  
9 lease, assignment or sublease of any housing accommodation or  
10 real property to any individual because of race, religion,  
11 color, national origin, ancestry, sex, sexual orientation or  
12 physical or mental handicap, provided that the physical or  
13 mental handicap is unrelated to an individual's ability to  
14 acquire or rent and maintain particular real property or housing  
15 accommodation;

16 (2) discriminate against any individual in the  
17 terms, conditions or privileges of the sale, rental, assignment,  
18 lease or sublease of any housing accommodation or real property  
19 or in the provision of facilities or services in connection  
20 therewith because of the race, religion, color, national origin,  
21 ancestry, sex, sexual orientation or physical or mental  
22 handicap, provided that the physical or mental handicap is  
23 unrelated to an individual's ability to acquire or rent and  
24 maintain particular real property or housing accommodation; or

25 (3) print, circulate, display or mail or cause

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1 to be printed, circulated, displayed or mailed any statement,  
2 advertisement, publication or sign or use any form of  
3 application for the purchase, rental, lease, assignment or  
4 sublease of any housing accommodation or real property or to  
5 make any record or inquiry regarding the prospective purchase,  
6 rental, lease, assignment or sublease of any housing  
7 accommodation or real property [~~which~~] that expresses any  
8 preference, limitation or discrimination as to race, religion,  
9 color, national origin, ancestry, sex, sexual orientation or  
10 physical or mental handicap, provided that the physical or  
11 mental handicap is unrelated to an individual's ability to  
12 acquire or rent and maintain particular real property or housing  
13 accommodation;

14 H. any person to whom application is made either for  
15 financial assistance for the acquisition, construction,  
16 rehabilitation, repair or maintenance of any housing  
17 accommodation or real property or for any type of consumer  
18 credit, including financial assistance for the acquisition of  
19 any consumer good as defined by Section 55-9-109 NMSA 1978, to:

20 (1) consider the race, religion, color,  
21 national origin, ancestry, sex, sexual orientation or physical  
22 or mental handicap of any individual in the granting,  
23 withholding, extending, modifying or renewing or in the fixing  
24 of the rates, terms, conditions or provisions of any financial  
25 assistance or in the extension of services in connection with

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1 the request for financial assistance; or

2 (2) use any form of application for financial  
3 assistance or to make any record or inquiry in connection with  
4 applications for financial assistance [~~which~~] that expresses,  
5 directly or indirectly, any limitation, specification or  
6 discrimination as to race, religion, color, national origin,  
7 ancestry, sex, sexual orientation or physical or mental  
8 handicap;

9 I. any person or employer to:

10 (1) aid, abet, incite, compel or coerce the  
11 doing of any unlawful discriminatory practice or to attempt to  
12 do so;

13 (2) engage in any form of threats, reprisal or  
14 discrimination against any person who has opposed any unlawful  
15 discriminatory practice or has filed a complaint, testified or  
16 participated in any proceeding under the Human Rights Act; or

17 (3) willfully obstruct or prevent any person  
18 from complying with the provisions of the Human Rights Act or to  
19 resist, prevent, impede or interfere with the commission or any  
20 of its members, staff or representatives in the performance of  
21 their duties under the Human Rights Act; or

22 J. any employer to refuse or fail to accommodate to  
23 an individual's physical or mental handicap or serious medical  
24 condition, unless such accommodation is unreasonable or an undue  
25 hardship. "

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1           Section 4. A new section of the Human Rights Act is  
2 enacted to read:

3           "[NEW MATERIAL] QUOTAS PROHIBITED. --A person, employer,  
4 employment agency or organization shall not use the provisions  
5 of the Human Rights Act to adopt or implement a quota on the  
6 basis of sexual orientation. "

7           Section 5. Section 28-1-9 NMSA 1978 (being Laws 1969,  
8 Chapter 196, Section 8, as amended) is amended to read:

9           "28-1-9. EXEMPTIONS. --Nothing contained in the Human  
10 Rights Act shall:

11           A. apply to any single-family dwelling sold, leased,  
12 subleased or rented by an owner without the making of any  
13 notice, statement or advertisement with respect to the sale,  
14 lease, sublease or rental of a dwelling unit that indicates any  
15 preference, limitation or discrimination based on race, color,  
16 religion, national origin, ancestry, [~~or~~] sex or sexual  
17 orientation. This exemption is subject to these further  
18 reservations:

19                   (1) to qualify for the exemption, the seller  
20 ~~must not be an owner of or own or have reserved any interest in~~  
21 ~~more than three single-family dwellings; and~~

22                   (2) if the seller [~~doesn't~~] does not presently  
23 live in the dwelling or he was not the most recent occupant,  
24 then the exemption granted in this section [~~will~~] shall only  
25 apply to one sale in twenty-four months;

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1           B. bar any religious or denominational institution  
2 or organization [~~which~~] that is operated, [~~or~~] supervised or  
3 controlled by or that is operated in connection with a religious  
4 or denominational organization from limiting admission to or  
5 giving preference to persons of the same religion or  
6 denomination or from making selections of buyers, lessees or  
7 tenants as are calculated by the organization or denomination to  
8 promote the religious or denominational principles for which it  
9 is established or maintained, unless membership in the religious  
10 or denominational organization is restricted on account of race,  
11 color, national origin or ancestry;

12           C. bar any religious or denominational institution  
13 or organization that is operated, supervised or controlled by or  
14 that is operated in connection with a religious or  
15 denominational organization from imposing discriminatory  
16 employment or renting practices that are based upon sexual  
17 orientation; provided, that the provisions of the Human Rights  
18 Act with respect to sexual orientation shall apply to any other:

19                   (1) for-profit activities of a religious or  
20 denominational institution or organization subject to the  
21 provisions of Section 511 (a) of the Internal Revenue Code of  
22 1986, as amended; or

23                   (2) nonprofit activities of a religious or  
24 denominational institution or organization subject to the  
25 provisions of Section 501 (c)(3) of the Internal Revenue Code of

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1 1986, as amended:

2 D. apply to the determination of qualifications,  
3 with respect to the sexual orientation of employees or  
4 volunteers, by a nonpublic service organization whose primary  
5 function is to provide occasional services to minors. For the  
6 purposes of this subsection, "nonpublic service organization"  
7 includes:

8 (1) youth sports organizations;

9 (2) scouting organizations;

10 (3) boys' or girls' clubs;

11 (4) programs that provide friends, counselors  
12 or role models for minors;

13 (5) youth theaters;

14 (6) dance, music or artistic organizations for  
15 minors; and

16 (7) agricultural organizations for minors;

17 [~~E.~~] E. apply to rooms or units in dwellings  
18 containing living quarters occupied or intended to be occupied  
19 by no more than four families living independently of each  
20 other, if the owner actually maintains and occupies one of the  
21 living quarters as his residence;

22 [~~D.~~] F. apply to public restrooms, public showers,  
23 public dressing facilities or sleeping quarters in public  
24 institutions, where the preference or limitation is based on  
25 sex; and

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[E-] G. prevent the mandatory retirement of an employee upon reaching the age of sixty-five years or older, if the employer is operating under a retirement plan ~~[which]~~ that meets the requirements of Public Law 93-406, the Employee Retirement Income Security Act of 1974. "

Section 6. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 1997.